

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D C 20224



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date

DEC 13 2001

Daniel A Dzina  
8640 Brecksville Rd  
Brecksville, Ohio 44141

Social Security or Employer  
Identification Number  
274-48-8802

Person to Contact/ID #  
Augusta Simpson/36-08149  
Contact Telephone Number  
(312) 566-3908

Taxpayer Advocate's Office and  
Telephone Number  
1240 E Ninth st, room 423  
Cleveland, Ohio 44199  
(216) 522-7134

Last Day to File Petition with the  
United States Tax Court

MAR 13 2002

CERTIFIED MAIL

<u>Tax Year(s) Ended</u>	<u>First Tier (Initial) Tax Deficiency</u>	<u>Second Tier (Additional) Tax Deficiency</u>	<u>Additions to the Tax</u>
December 31, 1995	\$259 28	1,481 58	0
December 31, 1996	\$95,819 01	\$547,537 16	0
December 31, 1997	\$10,442 33	\$59,670 44	0

Dear Sir or Madam

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

The second tier tax deficiency shown above will be eliminated if correction is made by the end of the correction period, which ends 90 days after the mailing of this letter plus the total period of any extensions that may apply. You may request this office to grant an extension of the correction period for the time reasonable and necessary for you to bring about correction of the act giving rise to the first tier tax. However, an extension can be granted only if warranted by the facts and requested before the correction period would otherwise end. A statement as to the actions required for corrections is enclosed.

U S EXH 1

1100 Commerce Street Dallas, TX 75242

In lieu of  
Letter 1753(DO)

If you want to contest this deficiency in court before making any payment, you must file a petition with the United States Tax Court for a redetermination of the deficiency. Your petition must be filed with the Court within 90 days from the mailing date of this letter (150 days if addressed to you outside of the United States), plus time (if any) during which this office has extended the correction period as result of your request. The petition should be filed with the United States Tax Court, 400 Second Street NW, Washington, D C 20217, and the copy of this letter should be attached to your petition. Filing a petition will extend the correction period until after the Tax Court has decided whether the second tier tax was properly imposed.

If your petition involves a dispute of not more than \$50,000 for any one taxable period (or, if there is no taxable period, taxable event), a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you. The time in which you must file a petition with the Court (90 or 150 days, as the case may be, plus any extension of the correction period that may be granted) is fixed by law and the Court cannot consider your case if your petition is filed late. You can use, by writing to the Clerk of the United States Tax Court at 400 Second Street NW, Washington, D C 20217. You should do this promptly if you intend to file a petition with the Tax Court.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Court. If you decide not to file a petition with the Tax Court, please sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the mailing date of this letter (150 days if this letter is addressed to you outside the United States). The time for making the assessment is extended by any extension of the correction period that may be granted.

If you have any questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach this letter to help identify your account. Keep the copy for your records. Also, please include your telephone number and the most convenient time for us to call, so we can contact you if we need additional information.

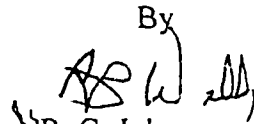
If you prefer, you may call the IRS contact person at the telephone number shown above. If this number is outside your local calling areas, there will be a long distance charge to you.

You may call the IRS telephone number listed in your local directory. An IRS employee there may be able to help you, but the contact person at the address shown on this letter is most familiar with your case. You may also call the Internal Revenue Service Taxpayer Advocate for assistance at the address or telephone number shown on ce Notice 1214.

Thank you for your cooperation

Sincerely yours,

Charles O Rossotti  
Commissioner

By  
  
NR C Johnson  
Director, EO Examinations

Enclosures  
Report of Examination  
Copy of this letter  
Waiver  
Notice 1214  
Publication 594



Form <b>4089</b> (Rev January 1983)	Department of the Treasury — Internal Revenue Service <b>Notice of Deficiency-Waiver</b>	Symbols <b>4929CHI Simpson</b>
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Name SSN or EIN, and address of Taxpayer(s)

Daniel A, Dzina  
274-48-8802  
8640 Brecksville Rd.  
Brecksville, Ohio 44141

Kind of Tax

Excise

☒ Copy to Authorized Representative

Tax Year Ended	Deficiency	
	Increase in Tax	Penalties
December 31, 1995	\$1,740.86	0
December 31, 1996	\$643,356.17	0
December 31, 1997	\$70,112.77	0

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above plus any interest provided by law

Your  
Signature

(Date signed)

Spouse's Signature,  
If A Joint Return  
Was Filed

(Date signed)

Taxpayer's  
Representative  
Sign Here

(Date signed)

Corporate  
NameCorporate  
Officers  
Sign Here

(Signature)

(Title)

(Date signed)



(Signature)

(Title)

(Date signed)

## Note

If you consent to the assessment of the amounts shown in this waiver please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining if necessary that you owe additional tax nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

## Who Must Sign

If this waiver is for any year(s) for which you filed a

joint return both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee) file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

If you agree, please sign one copy and return it. Keep the other copy for your records.



Form <b>4089</b> (Rev. January 1983)	Department of the Treasury — Internal Revenue Service <b>Notice of Deficiency-Waiver</b>	Symbols <b>4929CHI Simpson</b>
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(Date signed)

Corporate  
NameCorporate  
Officers  
Sign Here

(Signature)

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(Date signed)

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For an agent or attorney acting under a power of attorney a power of attorney must be sent with this form if not previously filed.

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## REPORT OF EXAMINATION-EXEMPT ORGANIZATIONS

Page 1 of 2

1 Form Number 4720		2 Key District Office Great Lakes		3 Date of Report	
4 Name and Address of Taxpayer Daniel A Dzina 8640 Brecksville Rd Brecksville, Ohio 44141			5 Name and Address of Private Foundation		
6 Social Security or Employer Identification No 274-48-8802		7 Tax Period(s) 9512, 9612, & 9712	8 Private Foundation Employer Identification No		9 Tax Period(s)
10 Report Preparer's Name Philip J Albaugh			11 Agreement Secured No		
12 Findings Discussed With E Roger Stewart/Representative			13 Agreement Date		
14(a) Summary of Proposed Adjustments			14(b) Penalty		
Internal Revenue Code Section	Period Covered by Examination	Amount of Tax	Additional Tax (Private Foundation)	Internal Revenue Code Section	Amount
4958	12/31/95	\$1,740 86			
4958	12/31/96	\$643,356 17			
4958	12/31/97	\$70,112 77			

Section 4958(c) (1) (A) of the Code provides that an excess benefit transaction is any transaction in which an economic benefit is provided by an applicable tax exempt organization, directly or indirectly, to or for use of any disqualified persons

As the First Vice-President and Executive Director, Mr Daniel Dzina was in a position to exercise substantial influence over the affairs of Cleveland Golden Gloves (CGG) Therefore, Mr Daniel Dzina was a disqualified person with respect to CGG within the meaning of section 4958(f) (1) (A) of the Code Also as the First Vice-President and Executive Director, Mr Daniel Dzina was an organization manager within the meaning of section 4958(f) (2) of the Code On January 12, 1995 CGG entered into a Land Installment Contract and on June 1, 1996 entered into Restated Land Contract with Northpoint Athletic Club II, Inc a Subchapter S Corporation solely owned by Daniel Dzina The land contract was related to property located at 18909 South Miles in Warrensville Heights, Ohio, which was purchased by Northpoint Athletic

15 Schedules and Exhibits Attached

Club II on December 30, 1993 for \$435,000 and sold by Northpoint Athletic Club II on July 23, 1997 for \$2,154,000 to the Cleveland Sportsplex, LTD, after substantial capital improvements and repairs, some of which were paid by CGG funds CGG defaulted on the Land Contract, and all renovations completed by CGG reverted back to Northpoint Athletic Club II upon the default of the land contract

The transactions between Daniel Dzina's Northpoint Athletic Club II Sub-S Corporation and CGG were not ARMS-LENGTH TRANSACTIONS AND WERE NOT FAIR MARKET VALUE TRANSACTIONS Daniel Dzina set up a land contract that CGG could in no way fulfill The contract was written so that all renovations completed by CGG would revert to Northpoint upon the default of the land contract Daniel Dzina, as sole shareholder of Northpoint, was the only person who received an economic benefit from the improvement of his building The CGG were spending its monies in 1995-1997 on improving the building and therefore they did not have enough funds to operate

Dzina and Northpoint were giving CGG money to operate and then taking these "donations" as tax deductions The CGG wouldn't have needed additional funds if they weren't renovating a building that belonged to Daniel Dzina, who had control of both the CGG and Northpoint Athletic Club II, Inc The Excess Business Transactions were the improvements and repairs to Daniel Dzina's (the disqualified person & foundation manager) property

The organization's representatives believe that there are no excess business transactions because the new owner of the property located on 18909 South Miles Road in Warrensville Heights, Ohio tore down the renovations that were made by CGG on Daniel Dzina's (Northpoint Athletic Club II Inc ) property As a result they feel that there was no economic benefit to Daniel Dzina The Service disagrees with this statement because Northpoint Athletic Club II, Inc , Daniel Dzina's corporation, purchased the property located at 18909 South Miles in Warrensville Heights for \$435,000 on December 31, 1993, and sold this same property on July 23, 1997 for \$2,154,000 The property was sold at a substantial gain of \$1,719,000 in less than three years

Apparently there must have been capital improvements (renovations) done on this building to increase the building's value by 80% Because the DP declines to sign the consent, the technical advice request could not proceed Because the statute for the years on December 31, 1996 & 1997 expires on December 31, 2001, the agent has done a statutory notice.

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15 Schedules and Exhibits Attached



Daniel A. Dzina

Calendar Years  
1995, 1996, 1997

FACTS

The Cleveland Golden Gloves Association, Inc (hereinafter referred to as CGG) is a tax exempt entity that is exempt under Internal Revenue Code section 501(c)(3). They received exempt status from the Internal Revenue Service on October 20, 1986. The organization's exempt purpose was to provide youth boxing. They were affiliated with a National Organization and held the National boxing championships in Cleveland in 1996. They held Amateur Boxing Tournaments up to March of 1998 for both a Junior Olympics class which was for youths under the age of 18, and an Open Division Weight Class for men between the ages of 17 and 32.

In 1993 Anthony Hughes, who was on the Board of Trustees, introduced a man named Daniel Dzina to the Board. He quickly became one of the four Trustees of the organization. Mr. Dzina was an officer & Executive Director from 1994 through 1997. Mr. Dzina was also the owner of a Subchapter S Corporation called Northpoint Athletic Club II, Inc.

Below is a list of the events that occurred in the order that they occurred.

December 30, 1993 - Northpoint Athletic Club II, Inc. purchased property located at 18909 South Miles in Warrensville Heights. The purchase price of the property was \$435,000.

December 12, 1994 and December 30, 1994 - Board Meetings were allegedly held on December 12, 1994 and December 30, 1994 to approve the purchase of the above property. They also approved making Dan Dzina Executive Director in addition to his current duties of 1<sup>st</sup> Vice President.

They authorized Dzina to research obtaining a bingo license. Minutes attached to the land contract showing its ratification differed from minutes that were attached to their 1995 Bingo Application. We received a copy of the Bingo Application from the State of Ohio. A bingo application must be signed and notarized. All information is submitted under penalties of perjury. These minutes stated that the following people were at the December 12, 1994 meeting:

Anthony Hughes, President  
Daniel Dzina, First Vice President  
Ronald A. Stackhouse, Recording Secretary  
Fred Kovacs, Nominee Financial Secretary/Treasurer  
Clytee Dunn  
Dick Acton  
Dick Stewart

The minutes attached to the land contract showed that only the Officers were present and the contract was ratified on their votes only. Both sets of minutes were signed by Ronald Stackhouse who was the Recording Secretary.

Other information on the bingo application (submitted under penalties of perjury) stated that they owned the building located at 18909 South Miles in Warrensville Heights from 1995, 1996, and 1997.

January 12, 1995 - CGG entered into a Land Installment Contract with Northpoint Athletic Club II, Inc., a Subchapter S Corporation solely owned by Dan Dzina. Dzina was also 1<sup>st</sup> Vice President and Executive Director of CGG. This land contract was signed by Dan Dzina as the owner of Northpoint (he was also the 1<sup>st</sup> Vice President and Executive Director of CGG at the time) and Anthony Hughes, the President of CGG. It was witnessed and notarized. Land contracts do not have to be filed in the State of Ohio.



The total price of the property (per the contract) was \$2,000,000. The land contract purchase price would be payable in one hundred and twenty consecutive, equal, monthly installment payments of \$24,931.04 each commencing June 1, 1995 and continuing thereafter on the first day of each and every calendar month through and including May 1, 2005.

Yearly gross income from the organization's 1993 and 1994 Forms 990 (which are open to public inspection) was \$32,287 and \$21,515, respectively.

The total square footage of the property was 127,000.

The following information is set forth in the land contract:

The parties acknowledge that Buyer was granted possession of the premises on December 15, 1994 in order to commence renovation of the premises. Buyer agrees to bear the entire cost and expense of the renovations in lieu of providing Seller with a down payment on the purchase price and in consideration of Seller granting Buyer possession of the premises without payment of rent, taxes or insurance until June 1, 1995. Should Buyer default hereunder and the Seller be required to exercise any of its rights under Paragraph 17 below, Buyer shall lose its interest in said renovations as and for liquidated damages.

Section 17 of the Land Contract basically states that if the Buyer defaults or if the Seller demands full payment of the balance due at any time during the contract and the Buyer is unable to pay, the following would occur:

The Seller shall be released from all obligations in law or equity to convey the premises to Buyer,

Buyer shall forfeit all rights to the premises or to the possession thereof.

Seller shall have immediate right to retake possession of said property and

Payments theretofore made by Buyer pursuant to this Contract shall be credited by Seller to the reasonable rental value of the premises during the period Buyer had the use and occupancy of the premises.

February, 1995 - CGG held its preliminary bouts on two weekends. These bouts were held at ESTABROOK RECREATION CENTER.

April 21, 1995 - CGG held the Championship bouts at CLEVELAND PUBLIC HALL.

June 30, 1995 - CGG made improvements to the property totaling \$18,952.00.

August 18, 1995 - CGG held its annual benefit night at NORTHFIELD PARK.

December 18, 1995 - CGG was unable to meet their obligation under the original 1995 Land Contract and defaulted on it. There were no payments made to the North Point Athletic Club II, from Cleveland Golden Gloves Association, Inc. in relation to the original Land Installment Contract dated January 12, 1995. There were no provisions in the contract that CGG could make improvements in lieu of land contract payments.

December 26, 1995 - CGG purchased carpeting for the building for \$740.79.

1995 Gross income reported on Northpoint's Form 1120S - \$175,990.

January 16, 1996 - An independent appraisal of the property on South Mules established a market value of \$205,000.

February 14 & 23, 1996 - Trial Tournaments were held at Sportscenter The CGG paid for the rental of the hall

February 15, 1996 - CGG made improvements to the property totaling \$93,755 04

March 1 & 2, 1996 - CGG semi-finals are held at Sportscenter The CGG paid for the rental of the hall

March 8, 1996 - Championship bouts were held at Sportscenter

May 15, 1996 - CGG made improvements to the property totaling \$51,515 39

June 1, 1996 - CGG entered into a second Land Contract with Northpoint Athletic Club II, Inc dated June 1, 1996 At this time Dzina was still the sole owner of Northpoint and was acting in the capacity of President for CGG The purchase price of the property was lowered to \$477,000 and the monthly payments were lowered to \$6 172 26 The portion of the building that this contract covered was 25,789 square feet

In the second Land Contract the purchase price was changed from \$2,000 000 to \$477 000 plus interest of 9 5% CGG was only purchasing a portion of the building in this second Land Contract There was no supporting documentation provided to show that this transaction was conducted using Fair Market Value prices and interest rates The following information was once again included in the document

The parties acknowledge that Buyer was granted possession of the Premises on January 1, 1996 in order to commence renovation of the Premises Buyer agrees to bear the entire cost and expense of the renovation in lieu of providing Seller with a down payment on the purchase price, and in consideration of Seller granting Buyer possession of the premises without payment of rent, taxes or insurance until June 1, 1996 Should Buyer default hereunder and Seller be required to exercise any of its rights under Paragraph 25 below all of the renovations shall be considered part of the real property and belong to Seller

It should be noted that this particular contract was signed by Dan Dzina as President of Northpoint Athletic Club II, Inc while he was also the President of CGG Matthew Gng signed as 2<sup>nd</sup> Vice President for CGG

The only copy of this contract in our possession was neither witnessed nor notarized

June 14, 1996 - CGG hosted the Interstate Challenge CGG paid for the rental of the hall

August 15, 1996 - CGG made improvements to the property totaling \$19 814 39

September 27, 1996 - CGG's annual benefit is held at NORTHFIELD PARK

November 15, 1996 - CGG made improvements to the property totaling \$34 004 91

1996 - There were \$74 678 85 of repairs expense to the building It appeared as if they classified some of the improvements as repairs

December 5, 1996 - CGG defaulted on the ' Second Land Contract

December 1, 1996 - Donation of \$121 06 to CGG from Northpoint Athletic Club II, Inc to CGG This donation was shown as a charitable contribution and a deduction was taken on Northpoint's Form 1120S

1996 - Gross rental income reported on North Point's Form 1120S related to South Miles property - \$217 538

March 28, April 4, and April 11, 1997 - CGG Tournament Trials were held at Sportsplex Sportscenter CGG paid for the rental of the hall

April 17, 1997 - Championship bouts were held at the CLEVELAND CONVENTION CENTER

1997 - CGG's annual fundraising benefit was held at NORTHFIELD PARK

1997 - Donation of \$98,738 to CGG from Northpoint Athletic Club II, Inc. Of this amount, a check dated March 25, 1997, was written by Northpoint to Nannicola, Inc. (a bingo supplier) in the amount of \$56,958.06 for delinquent payment of CGG's account. This \$98,738 showed up on Northpoint's Form 1120S as a charitable contribution.

The repairs account for 1997 totaled \$29,835. There were no invoices to substantiate these expenses.

Upon review of the invoices related to the "capital improvements and repairs/maintenance" the majority of the invoices failed to detail what work was done in relation to the payments made by CGG. The books and records just showed the amounts paid for the above expenses and to whom they were paid.

July 23, 1997 - Northpoint sold the property for \$2,154,000 to the Cleveland Sportsplex, LTD. The terms of the actual sale are under seal.

1997 - Gross rental income on Northpoint's Form 1120S related to South Miles - \$145,863.

1996 and 1997 - The organization made numerous improvements to the property located at 18909 South Miles road. In 1996 and 1997 they spent \$290,720.58 improving the building. The first six months of 1996 CGG classified their expenses to fix up the property as capital improvements. CGG subsequently began classifying them as repairs. The Service is aware that Northpoint did in fact fund a substantial amount of the improvements to the facilities both prior and after the "purchase" of the property by CGG.

There were no payments made to the Northpoint Athletic Club II, from Cleveland Golden Gloves Association, Inc. in relation to the original Land Installment Contract dated January 12, 1995.

CGG provided the Service with some invoices related to the expenses for improving and repairing the property for the 1995 & 1996 years. These invoices basically gave the name of the contractor and the amount paid. There was no documentation as to what project they were related to. There was no way to tell if the invoices were for supplies and work done on the South Miles property or other properties owned by Mr. Dzina. There were no indications of what work was performed, where the work was performed, and what part of the building it related to, if in fact it was used for improvements to the South Miles property at all. Some of the invoices had CGG as the purchaser and others had Northpoint or various individual contractors' names.

CGG did not report on its Form 990 for 1995 any excess benefit transactions.

#### LAW

Section 4958 of the Internal Revenue Code states:

(a) Initial taxes

- (1) On the disqualified person. There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.
- (2) On the management. In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction, excess benefit

For purposes of this section --

(1) Excess benefit transaction

(A) In general. The term "excess benefit transaction" means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit. The term "excess benefit" means the excess referred to in subparagraph (A).

(d) Special rules

For purposes of this section --

- (1) Joint and several liability. If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.
- (2) Limit for management. With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

(e) Applicable tax-exempt organization

For purposes of this subchapter, the term "applicable tax-exempt organization" means --

- (1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a); and
- (2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) Other definition

For purposes of this section --

(1) Disqualified person. The term "disqualified person" means, with respect to any transaction--

- (A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization;
- (B) a member of the family of an individual described in subparagraph (A); and
- (C) a 35-percent controlled entity.

- (2) Organization manager The term "organization manager" means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization) --
- (5) Taxable period The term "taxable period" means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of --
- (A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1) or
- (B) the date on which the tax imposed by subsection (a)(1) is assessed
- (6) Correction. The terms "correction" and "correct" mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards

#### GOVERNMENT POSITION

During the period in question CGG was recognized as a tax-exempt organization under section 501(c)(3) of the Code. Therefore, CGG is an applicable tax-exempt organization, as defined in section 4958(e)

As the First Vice-President and Executive Director Mr. Daniel Dzina was in a position to exercise substantial influence over the affairs of CGG. Therefore, Mr. Daniel Dzina was a disqualified person with respect to CGG within the meaning of section 4958(f)(1)(A) of the Code.

Section 4958(c)(1)(A) of the Code provides that an excess benefit transaction is any transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for use of any disqualified persons and the value of the consideration (including the performance of services) received by the organization from the disqualified person for providing such benefit.

On January 12, 1995, the organization entered into a Land Installment Contract with Northpoint Athletic Club, Inc. This contract stated the purchase price of the property would be \$2,000,000. The purchase price would be payable in one hundred and twenty consecutive, equal, monthly installment payments of \$24,931.04 each commencing June 1, 1995 and continuing thereafter on the first day of each and every calendar month through and including May 1, 2005. This land contract was signed by Dan Dzina as the owner of Northpoint (he was also the 1<sup>st</sup> Vice President and Executive Director of CGG at the time) and Anthony Hughes, the President of CGG. It was witnessed and notarized. Land contracts do not have to be filed in the State of Ohio.

Board meetings were held on December 12, 1994 and December 30, 1994 to approve the purchase. There is some discrepancy related to the people in attendance at these meetings. The Agents received two sets of minutes from two different sources. One set of minutes showed that only the Officers were present. Another set of minutes showed that there were three additional individuals present at the meetings. There is some doubt that these individuals were actually in attendance. Having the other three individuals there would have at least given the appearance that the transactions conducted at these meetings were "Arms-Length Transactions."

Per the organization's Forms 990 for 1993 and 1994 their gross income was \$38,287 and \$21,515 respectively. They entered into the contract on January 12, 1995. There was therefore no reasonable basis established that they would in fact have the money after other expenses to make monthly land contract payments of \$24,931.04. This is true even if they were planning to start up another income-producing activity such as bingo. Because there was no way one could predict what income, if any, would arise from additional planned income-producing activities one

could only base the reasonableness of the contract on their prior financial history. The organization was anticipating receiving more funding in the future mainly from bingo rents and contributions. As they had never operated a bingo game before there was no reasonable basis for them to believe that this operation would produce enough income to cover the land contract payments. There were no additional grant monies pledged and the rental income they received was minimal.

The main issue of this case is the fact that CGG made improvements and repairs to a building that was actually owned by Northpoint (Dan Dzina was 100% owner of Northpoint). Money was being spent on improvements and repairs of the building even after CGG defaulted on the Land Contract. Dan Dzina had control of both the CGG and Northpoint Athletic Club II, Inc. As the sole owner of Northpoint, Dan Dzina was the only person that received an economic benefit from these improvements and repairs. The transactions that were occurring during this time were not arms-length transactions and were not fair market value transactions. Dan Dzina set up a land contract that CGG could in no way fulfill. It is the Service's position that the land installment contracts were in fact never valid because there was no reasonable expectation that CGG could comply with the terms of the contract and in fact there were no payments made in relation to the contracts. Nowhere in the contracts were provisions made for improvements in lieu of rent. The only referral to this was in specific relation to improvements in lieu of the down payment and the first 6 months only of rent (this was for July 1, 1994 to December 31, 1994).

It should also be noted that there was nothing definitive as to what repairs and improvements were made by CGG. The documentation provided by the taxpayer basically laid out the amount paid and the person to whom it was paid to. The documentation did not verify what improvements or repairs were actually done to the property located at 18909 South Miles Road. There was nothing to indicate (on most invoices) how the materials were used. Purchasers on the invoices varied. Sometimes these purchasers were listed as other properties owned by the S Corporations of Mr. Dzina. As such it is unclear as to whom these purchases were ultimately made for or what the materials were used for. This documentation was therefore NOT deemed sufficient to contradict the Service's position.

They defaulted on their initial land contract on December 18, 1995. Subsequently they entered into a second Land Contract dated June 1, 1996. In the second Land Contract the purchase price was changed from \$2,000,000 to \$477,000 plus interest of 9.5%. The monthly payments were lowered to \$6,172.26. At this point they were only buying a portion of the building.

It should be noted that this second land contract was signed by Dan Dzina as President of Northpoint Athletic Club II, Inc. while he was also the President of CGG. Matthew Ging signed as 2<sup>nd</sup> Vice President for CGG. The only copy of this second land contract in the Service's possession was not witnessed or notarized; therefore its validity is questionable at best.

In the second Land Contract it stated, should buyer default hereunder and Seller be required to exercise any of its rights under Paragraph 25, all of the renovations shall be considered part of the real property and belong to Seller.

Based on the facts, it appears that neither Land Installment Contract should have been considered a valid contract or 'Arms-Length Transactions'. Both contracts appear to be skewed in favor of Dan Dzina. Neither contract was set up in a manner where anyone could reasonably expect performance on the part of CGG.

The contract was written up so that all renovations completed by CGG would revert to Northpoint upon the default of the land contract. Dan Dzina, as sole shareholder of Northpoint, was the only person who received an economic benefit from the improvement of his building. Because the organization was spending its monies in 1995 - 1997 on improving the building, they did not have enough funds to operate. Dzina and Northpoint were giving them money to operate and then taking these 'donations' as tax deductions. They wouldn't have needed additional funds if they weren't renovating a building that belonged to Dzina.

It is the government's position, however, that because CGG was spending its monies in 1996 and 1997 on improving the building, they did not have enough funds to operate. Because they didn't have enough funds to operate, Mr. Dzina began making contributions to CGG so that CGG could operate and taking charitable deductions for them. His 'contributions' were in effect monies funneled through the organization to pay for improvements and repairs to the facility which was effectively owned by him at that time.



Invoices provided by CGG were not properly marked by CGG to tie them into specific projects as they related to the improvement of the property. Many of the invoices were only marked with the name of the contractor, the date and the amount due. For example the invoices from Dunbar Contracting only show the name of the contractor, the amount and the date of services rendered. There is no way of knowing if these services were provided to the property "owned" by CGG or other properties that were being renovated concurrently by Northpoint/Mr. Dzina.

It should be noted that the Service is aware that Northpoint made substantial improvements to the property on its own. These improvements were made at various times prior, during and after the land contracts with CGG. The Service is not stating that the total increase in valuation of the property was due to improvements made by CGG. The Service is however stating that the improvements made by CGG were a contributory factor to the increase in property value. The improvements were made using CGG funds and it is the Service's position that at no time did CGG ever have equitable ownership of any portion of the premises. As a result, Dan Dzina (Northpoint) was the sole beneficiary of all improvements made to the property.

Also as the First Vice-President and Executive Director Mr. Daniel Dzina was an organization manager within the meaning of section 4958(f)(2) of the Code. As the First Vice-President and Executive Director himself Mr. Dzina participated in these excess benefit transactions. In addition, Mr. Dzina's participation in these excess benefit transactions was willful and was not due to reasonable cause, within the meaning of section 4958(a)(2) of the Code.

### Conclusions

Due to the fact that they failed to report the excess benefit transactions on their Form 990 for the 1995 year, the six year statute applies to that year.

Under section 4958(a)(1) of the Code, there is hereby imposed on the excess benefit transactions that occurred from 1995 to 1997 between CGG and Mr. Dzina a tax equal to 25% of the excess benefits as follows. These taxes are payable by Mr. Dzina. (See Exhibit A.)

1995	\$ 185 20
1996	\$68,442 15
1997	\$ 7 458 81

If Mr. Dzina does not make correction within the meaning of section 4958(f)(6) of the Code on any of the excess benefit transactions that occurred from 1995 to 1997 between him and CGG, there will hereby be imposed on these excess benefit transactions, under section 4958(b), a tax equal to 200% of the excess benefits. These taxes will be payable by Mr. Dzina. (See Exhibit A.)

1995	\$ 1 481 58
1996	\$547 537 16
1997	\$ 59 670 44

Under section 4958(a)(2) of the Code, there is hereby imposed on the participation by Mr. Dzina, an organization manager, with respect to CGG in excess benefit transaction between disqualified persons with respect to CGG and CGG a tax equal to \$10,000 of each excess transaction under section 4958(d)(2), is payable by Mr. Dzina. (See Exhibit A.)

1995	\$ 74 08
1996	\$27 376 86
1997	\$ 2 983 52



## EXHIBIT A

Daniel Dzina  
Schedule of Excess Benefit Transactions Subject to IRC 4958  
Calendar Years 1995 to 1997

Excess Benefit Transaction		1995	1996	1997
Date				
12/26/95	Carpet	\$ 740 79		
2/15/96	Improvement		\$ 93,755 04	
5/15/96	Improvement		\$ 51,515 39	
8/15/96	Improvement		\$ 19,814 39	
11/15/96	Improvement		\$ 34,004 91	
12/31/96	Repairs		\$ 74,678 85	
12/31/97	Repairs			\$ 29,835 22
Total Excess Business Transactions		\$ 740 79	\$ 273,768 58	\$ 29,835 22
25% First Tier Excise Tax - IRC 4958(a)(1)		\$ 185 20	\$ 68,442 15	\$ 7,458 81
200% Second Tier Excise Tax - IRC 4958(a)(2)		\$ 1,481 58	\$ 547,537 16	\$ 59,670 44
Excise Tax on Organization Manager Per IRC 4958(a)(2)		\$ 74 08	\$ 27,376 86	\$ 2,983 52
Total Excise Taxes Under IRC 4958		\$ 1,740 86	\$ 643,356 17	\$ 70,112 77
Total				\$ 715,209 80